

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G.O. Rt. No. 105/AIL/Lab./J/2010, dated 12th May 2010)

NOTIFICATION

Whereas, the Award in I.D.No.2/2008, dated 10-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Diadem Enterprises Private Limited, Puducherry and Thiru S.Saravanan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms. No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Wednesday, the 10th day of March 2010.

I.D. No. 2/2008

S. Saravanan . . . Petitioner.

Versus

The Managing Director,
Diadem Enterprises Private Limited,
Plot No. 25, Industrial Estate,
Sedarapet, Pondicherry . . . Respondent.

This industrial dispute coming on 25-2-2010 for final hearing before me in the presence of Tvl. R.S. Zivanandam, D. Ravichandran and S. Ashok Kumar counsels for the petitioner, Tvl. R. Ilancheliyan, R. Thilagavathi and S. Sakthi Priya, Advocates for the respondent, upon hearing both sides, upon perusing the case records, after having stood over for consideration till this day, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.6/Lab./AIL/J/2008, dated 25-1-2008 for adjudicating the following dispute:—

(a) Whether the dispute raised by the petitioner against the management over non-employment is justified or not?

(b) To what relief, he is entitled to?

(c) To compute the relief, if any, awarded in terms of money, if it can be so computed?

2. The petitioner, in his claim statement, has averred as follows:

The petitioner joined as a Machine Operator Grade-I in the respondent company from 20-7-1994. On 25-2-2002 the petitioner was bedridden and diagnosed as suffering from plasmocytoma L5 with compression fracture, for which, he was under treatment. On 16-12-2006, on the advice of the ESI, he approached the respondent for offering light work. But the respondent refused and in fact did not give any employment from that day onwards. The petitioner raised this industrial dispute with the respondent through his letter, dated 18-2-2006 along with the ESI letter, dated 16-2-2006. Even in spite of these requests, the respondent did not heed to giving any alternative employment as requested by the petitioner. Hence, he approached the Labour Officer (Conciliation) on 29-3-2006. The petitioner approached the management for amicable settlement through the Labour Officer, but the conciliation ended in vain and therefore the reference was made by the Government.

3. In the counter statement filed by the respondent it is contended that the petitioner was working as Cutting Operator in the respondent's factory and was on continuous leave with effect from 25-2-2002. It was reported that he was suffering from cancer and underwent treatment in the ESI Hospital. Subsequently during the month of February 2006, he approached the respondent with a request to offer him some light work. He has not submitted any fitness certificate from the ESI authorities and produced only a recommendation to offer him some light work. Since the respondent was not having any such light work in the factory, the petitioner was advised to meet the respondent in April 2006 to identify some suitable work. However, the petitioner raised the present industrial dispute during the conciliation, it was clearly informed that it is not obligatory on the part of the respondent to give any

alternative work as requested. However, as a gesture of goodwill and on humanitarian grounds, the respondent was prepared to give him an alternative light work without any precondition. The respondent agreed to protect the last drawn wages and the petitioner has not accepted this offer. The petitioner claimed notional increments and exorbitant packages on par with other workers, who were in continuous employment and only in such a situation, the conciliation failed.

There was no accident during the course of employment as claimed by the petitioner. The petitioner was suffering from plasmocytoma and undergoing treatment. There is no relation between the employment and the disease. The advice of the ESI authorities to recommend light work does not have any legal effect as far as the petitioner's case is concerned. Hence, he prays for dismissal of the petition.

4. During enquiry, on the side of the petitioner, Ex. A1 to Ex.A9 were marked. On the side of the respondent, Ex.R1 to Ex.R10 were marked.

5. *The point for determination is:*

Whether the dispute raised by the petitioner against the management over non-employment is justified or not?

6. *On the point:*

The main contention of the petitioner is that he is an employee under the respondent company, that and he was suffering from plasmocytoma L5 with compression fracture and that on the advice of ESI, therefore, he approached the respondent for light work, but the management refused and did not give any employment and relied upon the following decision:-

2009(1) CTC 679:-

S. Raghuraman Vs. Union of India and Others:

"Transfer of railway servant on medical incapacitation is different from transfer on request- Transfer on request is dealt with by clause 313- IREM also contemplates creation of super numerary post at it is similar to one contemplated under section 47 of Disabilities Act - Such medically incapacitated person should be absorbed in the alternate employment in his own district, sub-division, office, workshops etc., and if it is not possible in other offices or establishments."

7. On the side of the respondent, it is contended that the petitioner was suffering from cancer and underwent treatment in the ESI Hospital. He further

stated that since the respondent company was not having any light work, the petitioner's request could not be accepted and relied upon the following decision:—

2009 LLR 113:—

Novartis India Limited Vs. State of West Bengal and Others:-

"When an employee does not join at his transferred place, he commits misconduct — A disciplinary proceedings is, therefore, required to be initiated-An order of discharge is not a substitute for an order of punishment."

8. Heard both sides. Perused the records. It is an admitted fact that the petitioner was working as Machine Operator Grade-I in the respondent company and that he was suffering from plasmocytoma L5 with compression fracture. Since the petitioner was suffering from plasmocytoma L5 with compression fracture, the ESI Corporation recommended that the petitioner be offered light work, which could be seen from Ex.P1. Based on the recommendation of ESI Corporation, the petitioner requested the respondent for offering light work, which was refused by the respondent by stating that there was no such light work in the factory. The records would further show that the petitioner approached the Conciliation Officer on 29-3-2006 and in his reply letter, dated 28-7-2006 Ex.P3, the respondent has stated that the petitioner is an insured employee under the ESI Act and his continuous illness does not have any relevance with his occupation and therefore, it is not obligation on their part to give alternative employment. Further on 1-3-2007, the respondent has sent a letter Ex.P4 to the Labour Officer (Conciliation) by stating that "as a gesture of goodwill the management is prepared to give him some alternative employment". The respondent in Ex.P4 further stated that they are ready to provide such employment on precondition that the petitioner should not claim any back wages on the principle of "No work no pay", Hence, as per the own version of the respondent, the respondent is ready to provide alternative employment to the petitioner subject to some conditions. But in the counter, the respondent has stated that they are not having any such light work in the factory and this averment is false. In such circumstances, the respondent company, on humanitarian grounds should have considered the request of the petitioner and offered him to the light work. But the respondent company failed to do so.

9. It is contended on the side of the respondent that the petitioner was working as Cutting Operator in their factory and was on continuous leave with effect from 25-2-2002 due to ill-health, for which they are having every right to terminate the services of the petitioner and it is not obligatory on the part of the respondent to keep any workman in service or provide alternative light work in case, they are found unfit for the job. However, on humanitarian grounds, no action was initiated against the petitioner for obvious reasons that he was suffering from an incurable disease.

10. But the petitioner's case is he was not given employment from 25-2-2002 and even after approaching the management often and often, and when called by the respondent, there was no response from them. Admittedly, the petitioner was suffering from plasmocytoma L5 with compression fracture. The ESI Corporation also recommended that the petitioner be offered light work. There is no misconduct on the part of the petitioner by the respondent. It is also to be noted that there was no memo. or show cause notice issued to the petitioner and no domestic enquiry was conducted before denying the employment to the petitioner by the respondent.

11. When it is a specific case of the petitioner that by way of requesting before the management, citing health ground that he should be permitted in the post of employment to him. When the health condition of the petitioner is known to the respondent, it is for the respondent to consider his request on humanitarian grounds and post him in light work. It is unfair and unjustified and lacking in humanitarian consideration on the part of the management to have denied the employment to the petitioner despite his health condition. Human life is precious and loss of human life cannot be compensated in terms of any benefit. These points had been totally forgotten by the management before having ventured to deny the employment to the petitioner. This court holds that the denial of employment to the petitioner is unwarranted and hence, the decision cited by the learned counsel for the respondent is not applicable to the present facts and circumstances of the case. Therefore, the denial of employment is held to be unjustified. The respondent is also directed to sympathetically consider the request of the petitioner to post him in a light category work. Since the denial of employment is held to be unjustified, the petitioner is entitled for full wages at the same rate as he was paid prior to or on the date of denial of employment. The respondent shall calculate the wages payable to the petitioner and shall pay him from 25-2-2002 *i.e.*, from the date of illness till reinstatement with back wages and continuity of service.

15. In the result, the industrial dispute is allowed and the respondent/management is ordered to reinstate the petitioner from 25-2-2002 with full back wages and other attendant benefits with continuity of service. However, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 10th day of March 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for the petitioner: Nil .

List of witnesses examined for the respondent: Nil .

List of exhibits marked for the petitioner:

- Ex.P1 — Copy of the letter, dated 18-2-2006 sent by the petitioner.
- Ex.P2 — Letter, dated 23-3-2006 sent by the petitioner to Labour Officer.
- Ex.P3 — Copy of the letter, dated 28-7-2006 sent to Labour Officer.
- Ex.P4 — Copy of the letter, dated 1-3-2007 sent to Labour Officer.
- Ex.P5 — Copy of the letter, dated 19-3-2007 sent by the petitioner to Labour Officer.
- Ex.P6 — Letter, dated 30-3-2007 sent by the respondent.
- Ex.P7 — Copy of the letter, dated 5-11-2007 sent to Secretary to Government.
- Ex.P8 — Letter, dated 26-12-2007 sent by the petitioner to Secretary.
- Ex.P9 — Copy of the notification, dated 25-1-2008.

List of exhibits marked for the respondent:

- Ex.R1 — Copy of the letter, dated 28-1-2004 sent by Cancer Institute, Chennai.
- Ex.R2 — Copy of the fitness certificate.
- Ex.R3 — Copy of letter, dated 16-2-2006 sent by ESI.
- Ex.R4 — Copy of the letter, dated Nil sent by the petitioner to the respondent.
- Ex.R5 — Copy of the letter, dated 29-3-2006 sent by the petitioner to Labour Officer.
- Ex.R6 — Copy of the letter, dated 6-4-2006 sent by the respondent to Labour Officer.
- Ex.R7 — Copy of the letter, dated 28-7-2006 sent by the respondent.

- Ex.R8 — Copy of the letter, dated 16-11-2006 sent by the petitioner.
- Ex.R9 — Copy of the letter, dated 1-3-2007 sent by the respondent.
- Ex.R10 — Copy of the letter, dated 19-3-2007 sent by the respondent.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 106/AIL/Lab./J/2010, dated 13th May 2010)

NOTIFICATION

Whereas, the Award in I.D. No.30/2006, dated 9-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Aditi Diamonds Export (P) Limited, Puducherry and Thiru N. Sundarakumar over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
Presiding Officer-cum-
II Additional District Judge.

Tuesday, the 9th day of March 2010

I.D. No. 30 of 2006

Sundarakumar,
S/o. Nallathambi,
10, Jayaram Nagar,
Ariankuppam, Pondicherry. . . Petitioner.

Versus

The Managing Director,
Aditi Diamonds Exports (P) Ltd.,
Puducherry. . . Respondent.

This case coming on 25-2-2010 for final hearing before me in the presence of Thiru S. Parimalam, Counsel for the petitioner and Thiru R. Ilancheliyan and R. Thilagavathi, Advocates for the respondent, upon hearing both sides, on perusing the records and having stood over till this day for consideration, this court passed the following:—

ORDER

This industrial dispute has been referred to as per the G.O. Rt. No.173/2006/Lab/AIL./J, dated 30-11-2006 for adjudicating the following:—

1. Whether the non-employment of N. Sundarakumar by the management M/s. Aditi Diamonds Exports Private Limited, Pondicherry is justified or not?
 2. To what relief he is entitled to?
 3. To compute the relief, if any, awarded in terms of money if it can be so computed?
2. The facts of the industrial dispute in brief is as follows:—

The petitioner joined as Table Smoother in the respondent company in February 1996 and his monthly salary was Rs. 600. His job was to polish the upper portion of the raw diamond to give it a shining finish. The company had been paying such low salary for years together. But the petitioner was given an incentive for the stones as polished. For the said salary, the petitioner had to compulsorily polish 200 diamonds and for every additional diamonds, the company paid the petitioner 14 paise. Though he was employed in the said company from 1996, the company gave him an appointment order only on 21-12-1998. The company had been giving annual increment in the basic salary as well as in the incentives. Because of his hard work and efficiency, he used to draw a salary of Rs. 5,000 per month.

Sometime in the year 2003, the company stopped giving incentive for the Table Smoother Section on the grounds that they had been making good money in the said section. The company had then paid an incentive of 27 paise for every diamond over and above 200 diamonds, which was not increased from the year 2003. There had been a lot of protests amongst the workers in the Table Smoother Section because of no increment in the Table Smoother Section. But the management used to terminate the services of those, who used to raise such protest.

The management also increased the number of minimum diamonds to be polished for the basic salary from 200 to 300, thereby reducing their salary to substantially low level. Being a senior worker in the

management, the petitioner had started questioning the anti-labour activities of the company. Hence, the management had issued a letter to the petitioner, dated 22-10-2005, wherein they made a false allegation against the petitioner that the petitioner had abused his superior officer. He gave explanation to the said letter on 25-10-2005 denying the allegations. The management issued a charge sheet to the petitioner on 26-10-2005 and then enquiry was conducted by appointing an Enquiry Officer by name Ramalingam.

The management suspended the petitioner from the service on 2-11-2005 and did not pay the full salary during the said period. Then the management issued a second charge sheet to the petitioner on 10-11-2005 making vague allegation of misbehaviour with his superior officer. The petitioner participated the enquiry, which was conducted on 30-11-2005 and gave a letter to the Enquiry Officer to permit the petitioner to engage an advocate to defend him. The Enquiry Officer obtained his signatures in a bunch of papers by stating that they are formal papers, which are required to be signed in routine to complete the legal formalities. No witness was examined in his presence during the enquiry proceedings.

Later on, the petitioner received a show cause notice on 20-12-2005 along with copy of the enquiry report, dated 7-12-2005 and the alleged enquiry proceedings, dated 30-11-2005. The petitioner was shocked to find that the Enquiry Officer had completed the enquiry and found him guilty. The Enquiry Officer cheated him by obtaining signatures on certain papers, which were actually evidences given by the management witnesses. The petitioner immediately wrote a letter to the management on 23-12-2005, informing it as to what had happened on the said day and requested for a fresh enquiry. The management refused his request and removed him from service on 6-1-2006. The enquiry proceeding is vitiated by fraud and the principles of natural justice has not been involved. Hence, this petition.

4. *Per contra*, traversing the averments in the claim statement, the respondent filed the counter with the following averments:—

The petitioner abused the Senior Supervisor on, 21-10-2005 in the presence of number of Junior Supervisors, using filthy language. Therefore, the disciplinary actions were contemplated by due process of law. The Enquiry Officer is an independent legal practitioner and the enquiry was under

principles of natural justice. The petitioner was given an opportunity to take assistance of a co-worker, but he has not chosen to take the assistance. Further nobody from the Trade Union is interested to assist him for the very reason that he indulged in an act of gross misbehaviour. The petitioner actively participated in the enquiry proceedings and the witnesses were examined in his presence. The act of the respondent in terminating the services of the petitioner is only for the grievous misconduct committed by him. Hence, he prays for dismissal of the petition.

5. During enquiry, on the side of the petitioner, Ex.P1 to Ex.P17 were marked by consent. On the side of the respondent, Ex R1 to Ex.R14 were marked by consent.

6. *The point for consideration is:*

Whether the dismissal of the petitioner is justified or not?

7. *On this point:*

This reference has been made by the Government to decide whether the non-employment of the petitioner by the respondent management is justified or not? On appearance of petitioner and the management, they filed their respective claim statement as well as the counter.

8. On hearing both sides and on perusing the records, it reveals that the petitioner has been dismissed by the respondent. The petitioner in his claim statement averred that the domestic enquiry has not been conducted by the Inquiry Officer as prescribed by law in a neutral manner. He has conducted the domestic enquiry in a biased manner without giving any opportunity which is entitled for the delinquents as per law as well as by the principles of natural justice. Further the Enquiry Officer obtained his signature in a bunch of papers, which were subsequently used against him in the enquiry proceedings. On the date of enquiry, he was only present and no witness was examined in his presence. Moreover the Inquiry Officer has not heard the contentions of the petitioner and the enquiry report has also been submitted with unjustified findings. In fact the petitioner has not committed any misconduct as alleged by the respondent. But the management have taken action by way of issuing show cause notice and by way of conducting domestic enquiry without following the principles of natural justice and on wrong conclusion by the Inquiry Officer the management dismissed the petitioner.

9. The management filed its counter before this court that they have followed the principles of natural justice while charging the delinquent and conducting the

domestic enquiry by a neutral Inquiry Officer. On proved charges alone, the petitioner had been dismissed from his services as per the principles of natural justice. Even in the domestic enquiry the petitioner has been allowed to be assisted by his co-employee. Though the petitioner has been given fair chance to peruse the records as well as to cross-examine the witnesses, who were examined on the side of the management in the domestic enquiry, he failed to utilise the same. The Inquiry Officer, on considering the documents as well the evidences of the management witnesses, had rightly come to the conclusion that the charges of the petitioner were proved. On the conclusion of the report submitted by the Inquiry Officer, the petitioner has been terminated from his services by way of punishment for the mistakes committed by him. Hence, there is no scope to intervene in the order of this respondent management by the Labour Court and relied upon the following decisions:—

2009 LLR 1057:

Biecco Lawrie Limited and Another Vs. State of West Bengal and Another:

“Enquiry Officer - Can also be an advocate of the employer - Mere fact that the enquiry was conducted by an officer of the management would not vitiate the enquiry - The fact that the Enquiry Officer, who was the company lawyer cannot be considered as being “biased and partisan” who favoured and was partial towards the management of the company.”

2009 LLR 33:

R.S. Korvi Vs. Pieco Electronics and Electricals Limited Loni Kalbhor and Another:

“Dismissal - From service - Of the petitioner for assaulting senior officer in the factory premises - Show cause notice issued - Enquiry was conducted - Proceeding were adjourned time and again at the request of the petitioner and finally a registered letter was sent to her intimating that the date of final hearing was fixed and in case the petitioner still abstained - The enquiry would be held *ex parte*-*Ex parte* enquiry resulted in her termination. Challenged before the Labour Court - Labour Court upheld dismissal from service - In writ petition - Labour Court’s award upheld.”

2009 LLR 113:

Novartis India Limited Vs. State of West Bengal and Others:

“Back wages cannot be granted almost automatically upon *setting aside* an order of termination - Burden of proof that remained

unemployed would be on the workman - For the purpose of grant of back wages, besides other factors, conduct of the concerned workman also plays a vital role - Back wages cannot be claimed as a matter of right.”

10. At this stage when we peruse the domestic enquiry report Ex.R14 relating to the petitioner, we can understand that seven witnesses were examined in the enquiry of the petitioner on the side of the management. The petitioner has been permitted to appear through his assistant. The petitioner requested the management to appoint an advocate to defend the enquiry and the said request was refused by the respondent management. On 17-11-2005 the Enquiry Officer started the enquiry and on the said day, seven witnesses were examined and the permission was given to the petitioner to cross-examine them. On the side of the petitioner, he was examined and was cross-examined by the respondent. Finally, the Inquiry Officer decided the enquiry against the delinquent that all the charges framed against him are proved.

11. On perusing the entire report of the domestic enquiry and on reappraised the evidence adduced before the domestic enquiry, it reveals that the enquiring authority had concluded his findings not based on evidence on record. The charge against the petitioner was that he abused the Senior Supervisor in a filthy language. All witnesses, examined on the side of the respondent management, have stated about the filthy language used by the petitioner. There is no mention about the date on which the management witnesses were examined and cross-examined.

12. The contention of the petitioner is that he attended the enquiry proceedings on 30-11-2005 at about 11.00 a.m. and requested the Enquiry Officer to engage a counsel to defend him. But the Enquiry Officer obtained his signature in a bunch papers by stating that these are formal papers, which are required to be signed in routine to complete the legal formalities and on 20-12-2005 he received a show cause notice from the respondent management along with enquiry report and found that he is guilty of the charges levelled against him, based on the said enquiry. He further stated that no witnesses were examined in his presence on 30-11-2005 and hence the Enquiry Officer cheated him by obtaining signatures on certain papers, which were actually the evidences given by the management witnesses.

13. On the side of the petitioner, a letter dated 23-12-2005 written by him to the respondent management was marked as Ex.P15. Perusal of Ex.P15 would reveal that the petitioner questioned the said enquiry report and

requested the respondent management to cross-examine the management witnesses. When the petitioner requested to cross-examine the management witnesses, the respondent should have given him an opportunity to cross-examine the witnesses. A perusal of the report of the Enquiry Officer, it reveals that he gave a finding that the charges were proved without cross-examination of the witnesses. On that score alone, the report cannot be sustained. Therefore, it is manifest that the Inquiry Officer was posthaste in concluding the enquiry. Further copy of statements of witnesses have not been furnished to the petitioner to afford him an opportunity to explain his defence.

14. The cardinal point that has to be borne in mind in all domestic enquiries is whether the person concerned should have a reasonable opportunity of presenting his case and the authority should act fairly, justly, reasonably and impartially. The procedure adopted must be just, fair and reasonable in the particular circumstances of the case. In other words, application of the principles of natural justice that no man should be condemned unheard intends to prevent the authority from acting arbitrarily affecting the rights of the person concerned.

15. It is a fundamental rule of law that no decision must be taken which will affect the right of any person without his being informed of the case and giving him an opportunity of putting his case. The duty to give reasonable opportunity to be heard will be implied from the nature of the function to be performed by the authority which has the power to take punitive or damaging action. Even executive authorities which takes administrative action involving any deprivation of or restriction on inherent fundamental rights of citizens, must take care to see that justice is not only done but manifestly appears to be done. They have a duty to proceed in a way which is free from even the appearance of arbitrariness, unreasonableness or unfairness. They have to act in a manner which is patently impartial and meets the requirements of natural justice.

16. In this case, as per Ex.P1, the petitioner was appointed as Table Smoother under the respondent company on 21-12-1998. The petitioner was working in the respondent company for more than 7 years without any interruption. Hence, it was necessary to have given opportunity to the petitioner before issuing termination order to him. Neither such opportunity was given to the petitioner, nor principles of natural justice have been complied with in conducting the domestic enquiry. Therefore, the termination of service of the petitioner was bad and the decisions cited by the learned counsel for the respondent are not applicable to the present facts and circumstances of the case. Accordingly

I conclude that the domestic enquiry was not therefore conducted in accordance with the principles of natural justice. Hence, the decision of dismissal of the petitioner from the company by the respondent is an erroneous one and is also unjustified and accordingly, I decide this point in favour of the petitioner and as against the respondent. Hence, the petitioner can get the relief *viz.*, benefit of reinstatement with full back wages and other attendant benefits with continuity of service from the management/respondent. The point is decided accordingly in favour of the petitioner.

17. In the result, the industrial dispute is allowed and the respondent / management is ordered to reinstate the petitioner with full back wages and other attendant benefits with continuity of service. However, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 9th day of March 2010.

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses marked on the side of the petitioner. : Nil

List of documents marked by the petitioner :

- Ex.P1 — Appointment order, dated 21-12-1998.
- Ex.P2 — Copy of certificate of merit.
- Ex.P3 — Memo, dated 6-10-2005 issued by the respondent to the petitioner.
- Ex.P4 — Explanation, dated 8-10-2005 given by the petitioner.
- Ex.P5 — Show cause notice, dated 22-10-2005.
- Ex.P6 — Memo, dated 26-10-2005 issued by the respondent.
- Ex.P7 — Suspension order, dated 2-11-2005.
- Ex.P8 — Charge sheet 10-11-2005.
- Ex.P9 — Memo, dated 17-11-2005 issued by the respondent.
- Ex.P10 — Reply notice, dated 30-11-2005.
- Ex.P11 — Copy of the letter, dated 30-11-2005 sent by the petitioner.
- Ex.P12 — Copy of the Enquiry Report.
- Ex.P13 — Enquiry report, dated 7-12-2005.
- Ex.P14 — Show cause notice, dated 20-12-2005 sent by the petitioner.
- Ex.P15 — Copy of the letter, dated 23-12-2005 sent by the petitioner.
- Ex.P16 — Copy of the termination order, dated 6-1-2006.
- Ex.P17 — Copy of letter, dated 20-2-2006 sent to the Conciliation Officer.

List of witnesses examined on the side of the respondent. : Nil.

List of documents marked by the respondent :

- Ex.R1 — Copy of the complaint, dated 22-10-2005 sent to the respondent.
- Ex.R2 — Copy of the complaint sent to the respondent.
- Ex.R3 — Copy of the show cause notice dated 22-10-2005.
- Ex.R4 — Copy of the complaint, dated 25-10-2005 sent to the respondent.
- Ex.R5 — Copy of the memo dated 26-10-2005.
- Ex.R6 — Copy of the suspension order, dated 2-11-2005.
- Ex.R7 — Copy of the memo dated 17-11-2005.
- Ex.R8 — Copy of the acknowledgment card.
- Ex.R9 — Copy of the show cause notice, dated 20-12-2005 sent to the petitioner.
- Ex.R10 — Copy of the acknowledgment card.
- Ex.R11 — Copy of the letter, dated 23-12-2005 sent by the petitioner.
- Ex.R12 — Copy of the termination order, dated 6-1-2006.
- Ex.R13 — Copy of the acknowledgment card.
- Ex.R14 — Enquiry report.

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 107/AIL/Lab./J/2010, dated 13th May 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 28/2006, dated, 23-03-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Chamber De Commerce, Puducherry and its workman Thiru C. Govindasamy over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms. No. 20/91/Lab./L., dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Tuesday, the 23rd day of March 2010.

I.D. No. 28/2006

C. Govindasamy . . . Petitioner.
Versus

The General Secretary,
Chamber De Commerce,
Pondicherry. . . Respondent.

This industrial dispute coming on this day for hearing before me in the presence of Thiru B. Mohandoss, Counsel for the petitioner, Thiru A. Gandhiraj, Counsel for the respondent, upon perusing the case records, this court passed the following:

AWARD

This industrial dispute arises out of the reference made by the Labour Department, Government of Pondicherry *vide* G.O. Rt. No.170/2006/A!L/Lab./J dated 29-11-2006 for adjudication of the following industrial dispute:—

(a) Whether the non-employment of Thiru C. Govindasamy by the management of M/s. Chamber De Commerce, Puducherry is justified or not?

(b) To what relief, he is entitled to?

(c) To compute the relief if any, awarded in terms of money, if it can be so computed?

2. On the side of the petitioner, the claim statement was filed on 27-3-2008. Then the matter was posted for filing of the counter to 19-6-2008, 21-8-2008, 4-11-2008, 15-12-2008, 9-1-2009, 19-2-2009, 19-3-2009, 23-4-2009, 11-6-2009, 16-7-2009, 23-7-2009, 6-8-2009, 10-9-2009, 22-10-2009, 26-11-2009, 10-12-2009. But for more than 1½ years in 16 (sixteen) hearings, no counter was filed on the respondent. On 11-3-2010 the petitioner was examined as PW1 and through him Ex. P 1 to Ex. P 27 were marked. Satisfied. Claim proved. Hence, the industrial dispute is allowed and the respondent is hereby directed to reinstate the petitioner with full back wages, continuity of service and other attendant benefits. However, there is no order as to costs.

Typed to my dictation, corrected and pronounced by me in the open court on this the 23rd day of March 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses marked for the petitioner :

PW1— 11-3-2010 - Govindasamy

List of exhibits marked for the petitioner :

Ex.P1— Letter, dated 22-3-2005 sent by General Secretary of respondent to the President of the respondent.

Ex.P2— Copy of memorandum, dated 26-3-2005 given by the respondent to the petitioner.

Ex.P3— Copy of letter, dated 28-3-2005 sent by the petitioner to the respondent.

Ex.P4— Copy of letter, dated 23-7-2005 sent by the respondent to the petitioner.

Ex.P5— Copy of memorandum, dated 31-3-2005 given by the respondent to the petitioner.

Ex.P6— Copy of letter, dated 2-4-2005 sent by the petitioner to the respondent.

Ex.P7— Copy of memorandum, dated 7-4-2005 given by the respondent to the petitioner.

Ex.P8— Copy of letter, dated 12-4-2005 sent by the petitioner to the respondent.

Ex.P9— Copy of memorandum, dated 29-4-2005 sent by the petitioner to the Enquiry Officer.

Ex.P10—Copy of letter, dated 28-5-2005 sent by the petitioner to the Enquiry Officer.

Ex.P11—Copy of letter, dated 30-5-2005 sent by the petitioner to Enquiry Officer.

Ex.P12—Copy of letter, dated 6-6-2005 sent by the petitioner to Enquiry Officer.

Ex.P13—Copy of letter, dated 7-6-2005 sent by the petitioner to the respondent.

Ex.P14—Copy of letter, dated 23-7-2005 sent by the respondent to Enquiry Officer.

Ex.P15—Copy of letter, dated 25-8-2005 written by respondent to the petitioner.

Ex.P16—Representation, dated 7-10-2005 by the Defence Assistant to Enquiry Officer.

Ex.P17—Copy of Enquiry Report, dated 12-10-2005

Ex.P18—Office Order, dated 24-10-2005

Ex.P19—Letter, dated 26-10-2005 sent by the respondent to the petitioner.

Ex.P20—Copy of representation, dated 14-11-2005 to the Labour Officer.

Ex.P21—Reply, dated 10-1-2006 from the respondent to the Labour Officer.

Ex.P22—Report on failure of conciliation, dated 2-6-2006.

Ex.P23—Copy of rules and regulations of Chamber De Commerce.

Ex.P24—Statement, dated 29-3-2005 by Palaniandi to the President of respondent.

Ex.P25—Statement, dated 6-4-2005 by Kalaivani to President of respondent.

Ex.P26—Statement, dated 6-4-2005 by Elango to the President of respondent.

Ex.P27—Statement, dated 29-3-2005 by Sengadir to the President of respondent.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT

(G.O. Rt. No. 108/AIL/Lab./J/2010, dated 13th May 2010)

NOTIFICATION

Whereas, the Award in ID. No.12/2006, dated 17-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Sri Aurobindo Autocare Services, Pondicherry and its workman Thiru S.Thennarasu Joseph over non-employment has been received ;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G.O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
Presiding Officer-*cum*-
II Additional District Judge,
Labour Court, Pondicherry.

Wednesday, the 17th day of March 2010.

I.D. No. 12/2006

The President,
Centre of India Trade Union,
Muthialpet, Pondicherry . . . Petitioner.

Versus

The General Manager,
Sri Aurobindo Autocare Services,
Muthialpet, Pondicherry . . . Respondent.

This case coming on 4-3-2010 for final hearing before me in the presence of Thiru S. Parimalam, counsel for the petitioner, M/s. Law Solvers, Advocate for the respondent, upon hearing both sides, on perusing the records and having stood over till this day for consideration, this court passed the following:—

ORDER

This industrial dispute has been referred to as per the G.O. Rt. No. 41/2006/Lab./AIL/J, dated 22-3-2006 for adjudicating the following :—

1. Whether the retrenchment of Thiru S. Thennarasu Joseph, Cleaner by the management of M/s. Sri Aurobindo Autocare Services, Pondicherry, is justified or not?

2. To what relief, he is entitled to?

3. To compute the relief, if any, awarded in terms of money, if it can be so computed ;

2. The facts of the industrial dispute in brief is as follows:—

The petitioner was appointed by the respondent management as Trainee on 1-6-1998 with pay of Rs. 400 per month during the probationary period. The post of the petitioner was designed as Helper to Mechanic with effect from 1-6-1998 and the respondent management issued a certificate to the petitioner on 13-4-2001. The respondent management placed the petitioner for the post of Cleaner with an intention to insult him in the presence of others forced him to do the cleaning works. Due to the advice of the Physician, the petitioner could not work in the service station with water and expressed his inability, for which the management replied adamantly that he has to work wherever assigned.

The respondent management with *mala fide* intention created a charge as against the petitioner, as though he had problem with Driver Ravikumar, for which the respondent management issued a charge sheet as against the petitioner. Then the respondent management issued a letter of retrenchment, dated 23-3-2005, stating that there is no work to be provided to the petitioner and as such his services have become surplus. Therefore, the act of the management retrenching the petitioner is not *bona fide* one. The petitioner received a sum of Rs. 3,110 as basic pay up to February 2005 and he was not given a fair chance to explain his side. Therefore, he has to be reinstated with all back wages and benefits. Hence, this petition.

3. *Per contra*, traversing the averments in the claim statement, the respondent filed the counter with the following averments:—

The petitioner was originally appointed as a Trainee with effect from 1-6-1998 and thereafter the aforesaid worker was assigned the job of Helper to Mechanic. Finally, the abovesaid worker was assigned the job of Cleaner and designated as Cleaner and his last drawn salary is Rs. 3,110 per month.

On 23-3-2005 the respondent management decided to retrench the said worker, consequent to the abolition of the post of Cleaner with effect from 23-3-2005 and communicated to the petitioner and to the Labour Authorities as provided under the Industrial Disputes Act, 1947 and the said worker was offered retrenchment compensation and other benefits as per law. The petitioner refused to receive the compensation on 23-3-2005. Thereafter the respondent management forwarded by RPAD to the petitioner's last known address, the notice of retrenchment and cheque bearing No. 0024461, dated 23-3-2005 drawn on SBI, Siruthozhil Branch, Pondicherry for Rs. 29,792.10.

The petitioner received the said notice and returned the cheque to the respondent *vide* his letter, dated 26-3-2005. The allegation that worker Manikandan is Junior to the petitioner is not correct and the said worker has been engaged in different capacities (as Assistant Mechanic) in the establishment. Hence, he prays for dismissal of the petition.

5. During enquiry, on the side of the petitioner, Ex.P1 to Ex.P34 were marked by consent. On the side of the respondent, Ex. R1 to Ex. R7 were marked by consent.

6. *The point for consideration is :*

Whether the retrenchment of the petitioner by the respondent is justified or not?

7. *On this point:*

This reference has been made by the Government to decide whether the retrenchment of the petitioner by the respondent is justified or not? On appearance of petitioner and the management, they filed their respective claim statements as well as the counter.

8. It is admitted by both parties that the petitioner was originally appointed as a Trainee with effect from 1-6-1998 and thereafter the petitioner was assigned the job of Helper to Mechanic and finally the petitioner was assigned the job of Cleaner and designated as cleaner and the petitioner's last drawn salary was Rs. 3,110 per month.

9. The contention of the petitioner is that the respondent placed him for the post of Cleaner with an intention to insult him and due to the advice of the Physician, he could not work in the service station with water and expressed his inability and hence, the respondent management with *mala fide* intention created a charge as against him, as he had problem with Drivers Vasanthakumar and Ravikumar and subsequently he was retrenched *vide* letter, dated 23-3-2005 stating that there is no work to be provided to him.

10. On the side of the petitioner, Ex. P1 the appointment issued to him by the respondent, dated 7-5-1998, Ex. P3, working certificate dated 29-10-2001. Ex. P3 would show that the petitioner was working with the respondent from 1-6-1993 as Helper to Mechanic for fitting the engine and gear box and to carry out oil servicing. But without any reason, the petitioner was placed in the post of Cleaner. There is no proper explanation from the respondent. In the retrenchment letter, dated 23-3-2005 Ex. P29, issued to the petitioner, the respondent has stated as follows:—

“You have been presently working as Cleaner, but there is no work to be provided to you and as such your services have become surplus. Also there is no other job, which could be provided to you. Accordingly, we regret to inform you that your services will not be required with effect from 23-3-2005”.

The reason stated in Ex. P29 retrenchment notice cannot be accepted by this court, since the respondent has extracted the work for more than seven years from the petitioner, who was also discharging his duty efficiently to the satisfaction of the respondent management. Now the respondent has stated that as there is no work to be provided to the petitioner, he was retrenched from his service, which is against the principles of natural justice.

11. Further on the side of the respondent, the complaints received from the said Drivers namely Vasanthakumar and Ravikumar have not been produced before this court and there was no domestic enquiry conducted in this regard. When the petitioner was working in the respondent company for more than seven years without any interruption, he should not be retrenched from his service on the ground of abolition of post of Cleaner with effect from 23-3-2005. Particularly when on a previous occasion, the petitioner was transferred from the post of Helper to Mechanic and posted as Cleaner, the respondent should have taken steps to offer the petitioner some other job.

12. The respondent has not produced any documentary evidence to show that the petitioner was offered alternative work and that they later refused for that alternative job. Further this court is unable to accept the contention of the respondent that in the company there was no other job to be provided to him. Normally prior to taking a decision about the surplus, expenditure statement should have been taken into consideration and the company auditor's certificate should have been accepted by the company prior to holding that a petitioner's job has become surplus. The respondent has not produced any evidence in this regard. Further the respondent has not proved before this court through documentary evidence that the economic viability for the post was considered as found it to be not a viable one economically in the interest of the company. Further it is highly unbelievable that the petitioner's alone was identified as a surplus one and not others.

13. On the side of the petitioner, the letter, dated 5-5-2003 demanding increment was marked as Ex.P4. Wherein the respondent has specifically refused that they are not in a position to grant increment to the petitioner. It is further mentioned that if the workman finds it is too less, advised him to find some other job. The demand of increment is a lawful one, but because of the lawful demand, the management has developed enmity with the petitioner and later decided in the name of retrenchment, permanently sent him out from the job. The act of the respondent is not justifiable.

14. On the side of the petitioner, Ex.P5, Ex.P6. Ex.P7, Ex.P11, Ex.P12. Ex.P16, Ex.P21, Ex.P23, Ex.P26, various memos and warning letter sent to him by the respondent, which are relating to the complaint given by the said Drivers namely Vasanthakumar and Ravikumar. But as stated earlier, on the side of the respondent, no complaints from the said persons have been produced. Hence, the said letters cannot be taken into consideration. Therefore, for the reasons stated above,

the petitioner can get the relief *viz.* benefit of reinstatement with full back wages and other attendant benefits with continuity of service from the management/respondent. This point is decided accordingly in favour of the petitioner.

15. In the result, the industrial dispute is allowed and the respondent management is ordered to reinstate the petitioner with full back wages and other attendant benefits with continuity of service. However, there is no order as to costs.

Dictated to the stenographer, transcribed and typed by her, corrected and pronounced by me in the open court on this the 17th day of March, 2010.

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses marked on the side of the petitioner : Nil.

List of documents marked by the petitioner :

- Ex.P1 — Appointment order, dated 7-5-1998 issued to the petitioner.
- Ex.P2 — Copy of the certificate, dated 12-4-2001 issued by the respondent.
- Ex.P3 — Copy of the working certificate, dated 29-10-2001 issued by the respondent.
- Ex.P4 — Letter sent by the petitioner to the respondent demanding increment.
- Ex.P5 — Memo, dated 5-11-2004 issued to the petitioner.
- Ex.P6 — Memo, dated 6-12-2004 issued to the petitioner.
- Ex.P7 — Warning letter, dated 7-12-2004 sent to the petitioner.
- Ex.P8 — Copy of the letter, dated 10-12-2004 sent by the petitioner.
- Ex.P9 — Copy of the letter, dated 14-12-2004 sent by the petitioner.
- Ex.P10 — Copy of the letter, dated 18-12-2004 sent by the petitioner.
- Ex.P11 — Memo, dated 20-12-2004 sent to the petitioner.
- Ex.P12 — Memo, dated 20-12-2004 sent to the petitioner.
- Ex.P13 — Copy of the letter, dated 22-12-2004 sent by the petitioner.
- Ex.P14 — Copy of the letter, dated 31-12-2004 sent by the petitioner.
- Ex.P15 — Letter, dated 3-1-2005 sent by the petitioner.

- Ex.P16 — Letter, dated 13-1-2005 sent by the respondent.
- Ex.P17 — Letter, dated 17-1-2005 sent by the petitioner.
- Ex.P18 — Copy of the letter, dated 20-1-2005 sent by the petitioner.
- Ex.P19 — Copy of the letter, dated 28-1-2005 sent by the petitioner.
- Ex.P20 — Copy of the letter, dated 3-2-2005 sent by the petitioner.
- Ex.P21 — Memo, dated 24-2-2005 sent by the respondent.
- Ex.P22 — Copy of the letter, dated 1-3-2005 sent by the petitioner.
- Ex.P23 — Memo, dated 3-3-2005 sent to the petitioner.
- Ex.P24 — Copy of the letter, dated 3-3-2005 sent by the petitioner.
- Ex.P25 — Copy of the letter, dated 3-3-2005 sent by the petitioner.
- Ex.P26 — Letter, dated 7-3-2005 sent to the petitioner.
- Ex.P27 — Copy of the letter, dated 8-3-2005 sent by the petitioner.
- Ex.P28 — Copy of the letter, dated 8-3-2005 sent by the petitioner.
- Ex.P29 — Letter, dated 23-3-2005 sent to the petitioner.
- EX.P30 — Copy of the letter, dated 24-3-2005 sent by the petitioner.
- Ex.P31 — Letter, dated 26-3-2005 sent by the petitioner.
- Ex.P32 — Letter, dated 18-4-2005 sent by the respondent.
- Ex.P33 — Copy of the letter, dated 7-6-2005 sent by the respondent.
- Ex.P34 — Copy of the letter, dated 5-8-2005 sent to the Labour Officer.

List of witnesses examined on the side of the respondent : Nil.

List of documents marked by the respondent :

- Ex.R1 — Copy of the letter, dated 23-3-2005 sent to the Labour Department.
- Ex.R2 — Copy of the letter, dated 23-3-2005 sent by the respondent.
- Ex.R3 — Acknowledgment card
- Ex.R4 — Copy of the letter delivery note

- Ex.R5 — Letter, dated 24-3-2005 sent by the petitioner.
- Ex.R6 — Letter, dated 26-3-2005 sent by the petitioner.
- Ex.R7 — Cheque No. 0024461, dated 23-3-2005 for Rs. 29,792.10.

E.M.K.S. SIDDHARTHAR,
Presiding Officer,
Labour Court, Pondicherry.

**GOVERNMENT OF PUDUCHERRY
LABOUR DEPARTMENT**

(G.O. Rt. No. 109/AIL/Lab./J/2010, dated 13th May 2010)

NOTIFICATION

Whereas, the Award in LD. No.15/2003, dated 23-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Pond's India Limited (Hindustan Lever Limited, NIU), and Thiru. S. Murugaiyan, over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947) read with the notification issued in Labour Department's G. O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that they said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,
Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Tuesday, the 23rd day of March 2010

I.D. No. 15/2003

S. Murugaiyan . . . Petitioner.

Versus

The General Manager,
Pond's(India) Limited
(Hindustan Unilever Limited, NIU),
C-61-68. PIPDIC Industrial Estate,
Mettupalayam, Puducherry-605 009 . . . Respondent.

This petition coming before me for final hearing on 25-2-2010 in the presence of Thiru G. Mohan Keerthi Kumar, Advocate for the petitioner, Thiruvalargal T.S.Gopalan and Co., L. Satish and D.Dayanithi, Advocates for the respondent, upon hearing both sides, after perusing the case records and having stood over for consideration till this day, this court delivered the following:—

AWARD

This industrial dispute arises out of the reference made by the Government of Pondicherry, *vide* G. O. Rt. No.92/2003/Lab./J, dated 9-7-2003 of the Labour Department, Pondicherry, to resolve the following dispute between the petitioner and the respondent, *viz.*,

1. Whether the refusal of employment of Thiru S.Murugaiyan by the management of M/s. Pond's (India) Limited, Mettupalayam, Pondicherry, now functioning under the banner of Hindustan Lever Limited is disobedience of the award of the Labour Court, Pondicherry, passed in I.D. No. 8/99 is justified? If not, to what relief, the workman is entitled to?

2. To compute the relief, if any, awarded in terms of money, if it can be so computed.

2. The petitioner in his claim statement would aver that he got employment as Gardener in M/s. Pond's (India) Limited on 6-3-1985 and was working continuously. He proceeded on leave from 23-1-1995 to 30-1-1995 and when he came to join duty on 31-1-1995, the management of the said company without any reason, refused to give him work and terminated him from service. As the company refused to offer him work he filed application, dated 1-3-1995, before the Labour Officer (Conciliation) raising an industrial dispute against M/s. Pond's (India) Limited. However, during conciliation proceedings, the Labour Officer (Conciliation) colluded with M/s. Pond's (India) Limited and without any basis, the Labour Officer having dropped M/s. Pond's (India) Limited, had implicated one Krishnan, M/s. Industrial Catering and Allied Services as the employer of the petitioner, but as the conciliation met with failure, the Labour Officer sent failure report to the Government, following which, the Under Secretary to Government referred the industrial dispute to this court, as if the petitioner had raised the industrial dispute only as against the said Krishnan alone and such an act is a gross violation of the provisions of section 10 of the Industrial Disputes Act.

3. This court on receipt of the reference, had numbered the same as I. D. 8/1999 and after hot contest by the parties, this court passed an Award, dated 10-2-2000

in I. D. 8/1999, holding that the petitioner is not an employee under the said Krishnan, M/s. Industrial Catering and Allied Services, but he is an employee under the management of M/s. Pond's (India) Limited, Pondicherry and his non-employment is not justified. Though the petitioner waited for a considerable time for the publication of the Award in the Gazette of Pondicherry, the said Award was published only in the Supplementary Gazette No. 24, dated 11-6-2002 of the Government of Pondicherry. Meanwhile, the petitioner through his counsel communicated the finding of the Labour Court to the General Manager of M/s. Pond's India Limited through a registered letter, dated 28-10-2000 and though the management acknowledged receipt of the same, it remained silent without giving any reply. After publishing the Award in the Gazette, the petitioner's counsel sent a reminder letter, dated 1-7-2002, seeking reinstatement of the petitioner in service, for which, the respondent-management by a letter, dated 15-7-2002, have expressed their inability to comply with the directions contained in the Award, dated 10-2-2000, passed in I.D.8/99, since the Award was made without notice to them and they were not party before the Labour Court and as such, the Award would not binding them. Therefore, the petitioner filed a claim statement, dated 23-8-2002, before the Secretary to Government (Labour), enclosing copies of documents, requesting to take penal action against the respondent and for issue of certificate to the Collector to recover an amount of Rs.2,76,000 due towards salary from January 1995 to August 2002. The petitioner also approached the Labour Commissioner, Pondicherry, by presenting an application, dated 9-11-2002, seeking a direction to the respondent management to reinstate the petitioner in service. On the basis of the representations made before the Secretary to Government (Labour) and the Labour Commissioner, the matter has again been referred to this court as contemplated under section 36A of the Industrial Disputes Act, for clarification of doubts regarding interpretation of the Award, dated 10-2-2000 passed in I. D. 8/99. The petitioner states that as this court held that the respondent is the employer of the petitioner and that the non-employment of the petitioner is not justified, the petitioner is legally entitled to be reinstated in service with back wages and the respondent is liable to pay Rs.3,09,000 towards salary for 103 months from January 1995 to July 2003.

4. As Pond's (India) Limited has now been amalgamated with Hindustan Lever Limited, the Factory Manager of Hindustan Lever Limited has filed counter statement contending that Pond's (India) Limited commenced its production activities in the year 1980. In the year 1981, one M. Krishnan was engaged as contractor for running a canteen in the name and style

of "Industrial Catering and Allied Services" in the said factory for the benefit of the employees. After sometime he was also given the contract for housekeeping and garden maintenance, for which there were written agreements between Pond's (India) Limited, and Krishnan. The petitioner herein was offered employment as Gardener by the said Krishnan. As there were more than 20 workmen in employment, Pond's (India) Limited, registered itself as the principal employer under the Contract Labour (Regulation and Abolition) Act, and as the workmen under the contractor have to be covered under EPF and ESI Act, the contractor Krishnan used to remit the contributions for ESI and EPF in respect of the workmen under the code number allotted to Pond's (India) Limited. However, Krishnan was maintaining a separate attendance register and payment of wages register for those workmen engaged by him. In January 1995, Krishnan terminated the service of the petitioner on the ground that he absented habitually from work. But the petitioner raised an industrial dispute against Pond's (India) Limited, The Labour Officer (Conciliation) was informed that the petitioner was an employee under the contractor Krishnan and not under Pond's (India) Limited, and therefore, the Conciliation Officer issued notice to M. Krishnan to appear before him for discussion. During deliberations, the said Krishnan by a letter a dated 5-4-1996 agreed to take the petitioner back in service as a fresh entrant, but as the petitioner did not agree to it and pursued with the dispute. As it was clarified that the petitioner was employee under Krishnan, the Conciliation Officer dropped the proceedings against Pond's (India) Limited and referred the industrial dispute as against Krishnan before the Labour Court. Before the Labour Court, both sides did not let in any oral evidence but marked the documents on consent. The petitioner did not take any step before this court to implead Pond's (India) Limited as a party to the dispute in I.D. 8/99 or issued any notice to the respondent in this connection. However, this court without going into the question as to whether there was refusal of work to the petitioner by the contractor Krishnan, it had passed an Award holding that Pond's (India) Limited is the employer of the petitioner and such an award has been made in the absence of Pond's (India) Limited and without giving an opportunity to it of being heard in person and such an Award cannot be obviously enforced against the respondent. It is contended that section 36A of the Industrial Dispute Act can be invoked only at the instances of the parties to the Award. The Government cannot substitute any of the parties to the Award. Therefore, the present reference against the respondent herein, leaving Krishnan, M/s. Industrial Catering and Allied Services is bad in law and no valid adjudication can be made on

the basis of the reference and the Award cannot be enforced against the respondent. It is further contended that Pond's (India) Limited had surrendered their license and the company has been closed and all the workmen in service were given due compensation on 30-4-2003. It is reiterated that as the respondent herein was not a party in I.D. 8/99, the Award, dated 10-2-2000 passed in I.D.8/99 cannot be enforced against the respondent or the present reference under section 36A cannot be made against this respondent. Hence, the respondent has prayed this court to make an award holding that the reference is bad in law and to reject the claim of the petitioner.

5. On the side of the petitioner, the petitioner examined himself as P.W. 1 and marked Exs.P1 to P12. On the side of the respondent, the Manager of the respondent-company was examined as R.W. 1 and Exs.R1 to R3 were marked.

6. *Now the point for determination is:*

“Whether the Award, dated 10-2-2000, passed in I.D.8/99 is enforceable against the respondent herein?”

On point:

7. Heard the arguments of both sides. Records perused. The crux of the case is that the petitioner herein raised an industrial dispute against Pond's (India) Limited before the Labour Officer (Conciliation) on the ground that he joined the services of M/s. Pond's (India) Limited as Gardener on 6-3-1985, that he proceeded on leave from 23-1-1995 to 30-1-1995 and when he came to join duty on 31-1-1995, the management without any reason had refused to give him work and terminated him from service. He, therefore, raised an industrial dispute against M/s. Pond's (India) Limited before the Labour Officer (Conciliation). The Labour Officer (Conciliation), without any basis, dropped M/s. Pond's (India) Limited and continued with the conciliation proceedings by implicating one Krishnan, M/s. Industrial Catering and Allied Services as the employer of the petitioner. The conciliation met with failure and the Labour Officer (Conciliation) sent failure report to the Government, following which, the Under Secretary to Government referred the industrial dispute to this court, as if the petitioner had raised the industrial dispute only as against the said Krishnan. The reference was numbered as I.D.8/1999 and after hot contest by the parties, my learned predecessor of this court passed an Award, dated 10-2-2000, in I.D.8/1999, holding that the petitioner is not an employee under the said Krishnan, M/s. Industrial Catering and Allied Services, but he is an employee under the management of M/s. Pond's (India) Limited, Pondicherry and his non-employment is not justified. Though the said Award

is dated 10-2-2000 it was published only in the Supplementary Gazette No.24, dated 11-6-2002 of the Government of Pondicherry, that is, after a lapse of 2 years 4 months and that too, only after the petitioner had addressed Ex.P4-letter, dated 12-10-2001, to the Labour Commissioner, Pondicherry.

8. A perusal of Ex.P1-Failure Report, which gave rise to I.D.8/99, goes to show that the petitioner had initially raised the dispute against the management of M/s. Pond's (India) Limited regarding his non-employment. When the Labour Officer (Conciliation) called M/s. Pond's (India) Limited for enquiry, the latter had stated that the petitioner is an employee under the Catering Contractor Krishnan and therefore, the Labour Officer (Conciliation) called the said Krishnan for enquiry on 6-9-1995. During enquiry Krishnan admitted that the petitioner Murugaiyan is an employee under him, for which the petitioner strongly objected stating that he was not an employee under the said Krishnan. Hence, the enquiry was adjourned for production of some more documents by the said Krishnan, but subsequently, Krishnan did not attend the enquiry consecutively for many times and hence, the matter was decided *ex parte* and the conciliation ended in failure, Ex.P2 is the notification of the Labour Department, referring the industrial dispute to the Labour Court for adjudicating whether the refusal of employment to Thiru Murugaiyan by the management of M/s. Industrial Catering and Allied Services is justified or not. Firstly, it is seen from Ex.P1 that the Labour Officer (Conciliation) had purely acted on the bald and baseless representation of Pond's (India) Limited that the petitioner herein was not their employee. Secondly, the Labour Officer (Conciliation) had called the said Krishnan for enquiry only on the instigation of Pond's (India) Limited, which is evident from paragraph 5 of Ex.P1. Thirdly, as observed in Ex.P1, since Krishnan did not attend the enquiry, the Labour Officer (Conciliation) decided the matter *ex parte* and has referred the matter to the court only against Krishnan. When the industrial dispute was adjudicated by my predecessor, it was found through reliable evidence that M/s. Pond's (India) Limited was the employer of the petitioner herein and the said Krishnan was not the employer and therefore, this court passed an Award holding that the petitioner is not an employee under Krishnan but he is an employee under Pond's (India) Limited and his non-employment is justified.

9. The learned counsel for the petitioner argued that when the petitioner had raised an industrial dispute against Pond's(India) Limited, the Labour Officer has no *locus standi* to replace Pond's (India) Limited by the catering contractor Krishnan, The duty of the Labour

Officer is only to see whether a settlement could be arrived at between the parties and he cannot travel beyond the powers conferred upon him. If really, the Labour Officer (Conciliation) had acted fairly, he ought to have sent the failure report to the Government either against Pond's (India) Limited alone or against Pond's (India) Limited and the catering contractor Krishnan, Simply because the Labour Officer (Conciliation) either on his own accord or in collusion with Pond's (India) Limited had sent the failure report implicating the Catering Contractor alone, based upon which the Government has also referred the dispute to the court by implicating the catering contractor alone, the court cannot remain a silent spectator and dismiss or reject I.D.8/99 on technical ground that the dispute was not raised against the true employer. When the court after going through the tangible evidence adduced on both sides had come to a conclusion that M/s. Pond's (India) Limited alone was the employer of the petitioner herein and not the Contractor Krishnan, the court has passed the Award against the true employer M/s. Pond's (India) Limited, against whom the petitioner also had initially raised dispute. The sequence of events as available in the records would only indicate that the said Krishnan has been set up by Pond's (India) Limited only with an intention to escape from their legal liabilities. When Pond's (India) Limited was aware at the first instance that an industrial dispute has been raised against them by the petitioner herein and when the Catering Contractor Krishnan had been implicated in this case only at their instance, M/s. Pond's (India) Limited cannot be heard to say that they were not party to the proceedings in I.D. 8/99 before this court and therefore, the Award, dated 10-2-2000 will not bind them. In fact, the respondent herein in page 2, paragraph 4 of the counter statement filed in I.D. 15/2003 would state as follows:

“The New Industrial Undertaking was covered by the EPF and Miscellaneous Provisions Act and ESI Act. As the workmen of the Contractor have to be covered under both the enactments the said Contractor M. Krishnan used to remit contributions in respect of his workmen to the EPF Scheme and ESI Corporation under the code number of the New Industrial Undertaking ...” [Underlined by me to give emphasis].

Here, admittedly the New Industrial Undertaking refers to Pond's (India) Limited. The respondent would say that the Contractor Krishnan remitted the contributions of his workmen to the EPF and ESI Schemes under the code number allotted to Pond's (India) Limited, It is rather surprising to note that the respondent has taken such a vulnerable plea. According

to the respondent, Krishnan is a Catering Contractor supplying food materials for the employees of Pond's (India) Limited. No doubt, Pond's (India) Limited would be the principal employer who would be primarily responsible to pay ESI and EPF contributions to the corporation but it cannot allow the contractor to remit the contributions in the code number allotted to Pond's (India) Limited. If it is done so, it would mean that the particular employer is an employee of Pond's (India) Limited. Therefore, this court has rightly held that the Pond's (India) Limited is the employer of the petitioner herein.

10. It is to be seen that after the Award was passed on 10-2-2000, the petitioner through his counsel communicated the finding of the Labour Court to the General Manager of M/s. Pond's India Limited through Ex.P5, a registered letter, dated 28-10-2000 and though the management acknowledged receipt of the same, under Ex.P6 it remained silent without giving any reply. Since the Award passed by this court was also not published in time in the Gazette of Pondicherry, the petitioner gave Ex. P4 letter, dated 12-10-2001 to the Labour Commissioner, on the basis of which the Award was published in the State supplementary Gazette on 11-6-2002. After publishing the Award in the Gazette, the petitioner's counsel sent a reminder letter under Ex.P8, dated 1-7-2002, seeking reinstatement of the petitioner in service, for which, the respondent-management by a letter under Ex.P9, dated 15-7-2002, have expressed their inability to comply with the directions contained in the Award, dated 10-2-2000, passed in I.D.8/99, since the Award was made without notice to them and they were not party before the Labour Court and as such, the Award would not bind them. Therefore, the petitioner filed a claim statement, dated 23-8-2002, before the Secretary to Government (Labour), enclosing copies of documents, requesting to take penal action against the respondent and for issue of certificate to the Collector to recover an amount of Rs.2,76,000 due towards salary from January 1995 to August 2002. The petitioner also approached the Labour Commissioner, Pondicherry, by presenting an application, dated 9-11-2002, seeking a direction to the respondent management to reinstate the petitioner in service. On the basis of the representations made before the Secretary to Government (Labour) and the Labour Commissioner, the matter has again been referred to this court as contemplated under section 36A of the Industrial Disputes Act, for clarification of doubts regarding interpretation of the Award, dated 10-2-2000 passed in I.D. 8/99.

11. It is to be seen that though the Award was passed as early as 10-2-2000, the respondent herein had remained silent even to the legal notice under Ex.P5 issued on 28-10-2000. Ex.P5 was received by the

petitioner under the acknowledgment Ex.P6. Only under Ex.P9, dated 15-7-2002, the respondent has refused to comply with the terms of the Award passed against him. Therefore, even assuming that the respondent herein came to have knowledge of the Award passed by this court in I.D.8/99 only on 28-10-2000, it ought to have taken steps to challenge the Award passed against them. Admittedly, the respondent had adorned total silence right from 28-10-2000 and they have gone to the extent of saying that the Award will not bind them since they were not a party to the proceedings before the court and that the Award cannot be enforced against them. When the court has passed an order specifically finding that Pond's (India) Limited is the employee of the petitioner, the respondent is not expected to say that the award passed by the competent court will not bind them for any technical reason. As pointed out earlier the respondent has remained silent for ten years till now without challenging the said Award, dated 10-2-2000. The present reference made by the Government under section 36A of the Industrial Disputes Act is only to clarify the difficulty or doubt that has arisen to the Government as to the interpretation of the Award which has been passed against Pond's (India) Limited. Since Pond's (India) Limited has raised a doubt whether the finding of the Labour Court holding them liable in the earlier industrial dispute in which they were not a party, can be enforced against them, the Government has made the present reference. The scope of the enquiry in the present industrial dispute is nothing but to elucidate the ambiguity or obscurity in the earlier Award and the proceedings in the present industrial dispute under section 36A is not a review or modification of the earlier Award or to supplement a new relief which was not granted in the original Award but it is only to clarify the doubt or difficulty that has arisen in interpreting the earlier Award.

12. The learned counsel for the respondent relied upon the following rulings:

1. *Shambhu Nath Goyal Vs. Bank of Baroda, Jullunder [FJR. Vol.52, In the Supreme Court of India]*

No doubt it will be open to a party seeking to impugn the resulting award to show that what was referred by the Government was not an industrial dispute within the meaning of the Act, and that, therefore, the Tribunal had no jurisdiction to make the award.

2. *Newspapers Limited and Industrial Tribunal, Uttar Pradesh and Others [Labour Law Journal, 1957-Vol.II Reports, In the Supreme Court of India].*

No industrial dispute existed within the meaning of the expression as used in the Uttar Pradesh Industrial Disputes Act, 1947 (Act XXV11I of 1947)

The controversy which arises in this case is whether a dispute between an employer and a single workman falls within the definition of 'industrial dispute' as used in the Uttar Pradesh Act.

In spite of the fact that the making of a reference by the Government under the Industrial Disputes Act is the exercise of its administrative powers, that is not destructive of the rights of an aggrieved party to show that what was referred was not an 'industrial dispute' at all and therefore the jurisdiction of the Industrial Tribunal to make the Award can be questioned, even though the factual existence of a dispute may not be subject to party's challenge.

3. *Kirloskar Oil Engines, Limited, Kirkee, Poona and its workmen and two others [II LLJ, In the Supreme Court of India]*

Besides, it is necessary to bear in mind the limitations of the enquiry permitted under the proceedings contemplated by section 36A of the Act. The said section empowers the appropriate Government to refer any question to the Tribunal if the said Government is satisfied that any difficulty or doubt arises as to the interpretation of any provision of an Award made by the said Tribunal. TI further provides that when such a question is referred to it, the tribunal shall after giving the parties an opportunity of being heard, decide such question and its decision shall be final and binding on all such parties. It is thus clear that the scope of the enquiry under section 36 A is limited to the decision of the difficulties or doubts arising as to the interpretation of any provision in the Award. It is obvious that, any question about the propriety, correctness or validity of any provision of the Award would be outside the purview of the enquiry contemplated by the section. If a party to the Award is aggrieved by any of its provisions on the merits, the only remedy available to it is by making an appeal, say for instance under Article 136 of the Constitution to this Court. A grievance felt by a party against any provision of the Award can be ventilated only in that way and not by adopting the procedure prescribed by section 36A. Thus, the enquiry permissible under section 36A is limited to the question of the interpretation of the provisions of the Award in question and no more. As we have already pointed out, the present argument ignores the limitations of the scope of the enquiry under section 36A. A proceeding contemplated by section 36A is not a proceeding intended to enable the Tribunal to review or modify its own order, it is intended to enable the Tribunal only to clarify the provisions of its Award where a difficulty or doubt arises about the interpretation of the provisions.

4. *Workmen of Hercules Insurance Company Limited Vs. Hercules Insurance Company Limited, Calcutta [L.L.J, In the Supreme Court of India].*

The short question of law which fails to be decided in the present appeal is whether a dispute raised by the employees of a general insurance company against their employer for payment of bonus in any particular year can be referred for adjudication by an Industrial Tribunal under section 10(1) of the Industrial Disputes Act, 1947 (XIV) of 1947. The Tribunal has upheld the preliminary objection thus raised by the respondent and held that the reference is invalid. In the result the Tribunal refused to entertain the reference and dismissed it accordingly.

The above rulings are not helpful to the respondent case.

13. The learned counsel for the respondent argued that the petitioner cannot seek relief against the respondent herein for implementation of the Award passed in I.D.8/99 through this industrial dispute under section 36A, but he ought to have filed an application under section 33(C)(1) for getting the relief due to him under the Award or he could have moved the Government for attachment of the properties of the company in order to realise the salary dues. This court does not find any strength in the suggestions put by the learned counsel for the respondent. When the Labour Court has held as early as 10-2-2000 in I.D.8/99 that Pond's (India) Limited is the employer of the respondent herein and his non-employment is not justified, it is the bounden duty of the respondent to offer employment to the petitioner and should have paid the salary dues. Further, the respondents have marked Ex. R1 to R3 as per which M/s. Pond's (India) Limited has been closed down and the factory license have also been surrendered to the Chief Inspector of Factories, but the fact remains that the company has now been amalgamated with Hindustan Unilever Limited, NIU, who is the respondent herein and therefore as Hindustan Lever Limited have stepped into the shoes of Pond's (India) Limited, the respondents have to bear the liability of Pond's (India) Limited.

This point is answered accordingly.

14. In the result, Award is passed accordingly by answering the industrial dispute to the effect that the Award, dated 20-10-2000 passed this Court in I. D. 8/99 is enforceable against the respondent and consequently the petitioner is entitled for reinstatement in service with full back wages and attendant benefits.

Typed to my dictation, corrected and pronounced by me in the open court on this the 23rd day of February 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

List of witnesses examined for petitioner :

P.W. 1 3-4-2006 S. Murugaiyan

List of witnesses examined for respondent :

R. W. 1 17-12-2009 Soundarajan

List of exhibits marked for the petitioner :

- Ex.P1— 3-4-2006 Copy of the failure report by Conciliation Officer, dated 21-6-1996.
- Ex. P2— 3-4-2006 Copy of the notification dated 16-4-1999.
- Ex.P3— 3-4-2006 Copy of Award by the Hon'ble Labour Court, dated 10-2-2000.
- Ex.P4— 3-4-2006 Photocopy of the letter by the petitioner to the Labour Commissioner, dated 12-10-2001.
- Ex.P5— 3-4-2006 Photocopy of legal notice by petitioner, dated 28-10-2000.
- Ex.P6— 3-4-2006 Copy of the acknowledgment card, dated 30-10-2000.
- Ex.P7— 3-4-2006 Copy of Legal Notice, dated 1-7-2002.
- Ex.P8— 3-4-2006 acknowledgment card, dated 5-7-2002.
- Ex.P9— 3-4-2006 Copy of reply by the management, dated 15-7-2002.
- Ex.P10— 3-4-2006 Gazette publication
- Ex.P11— 3-4-2006 Claim statement, dated 23-8-2002, filed by the petitioner in LAOP. 8/99.
- Ex.P12— 3-4-2006 Claim statement, dated 9-11-2002, filed by the petitioner in LAOP.8/99.

List of exhibits marked for the respondent :

- Ex.R1— 17-12-2009 Memorandum of settlement.
- Ex.R2— 17-12-2009 Letter written by respondent to Chief Inspector of Factories.
- Ex.R3— 17-12-2009 Letter to discharge the license of respondent company.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.

GOVERNMENT OF PUDUCHERRY

LABOUR DEPARTMENT

(G. O. Rt. No. 114/AIL/Lab./J/2010, dated 27th May 2010)

NOTIFICATION

Whereas, the Award in I.D. No. 18/2007, dated 25-3-2010 of the Labour Court, Puducherry in respect of the industrial dispute between the management of M/s. Tirupathi Microtech Private Limited, Puducherry and Thiru V. Natarajan over non-employment has been received;

Now, therefore, in exercise of the powers conferred by sub-section (1) of section 17 of the Industrial Disputes Act, 1947 (Central Act XIV of 1947), read with the notification issued in Labour Department's G. O. Ms.No.20/91/Lab./L, dated 23-5-1991, it is hereby directed by Secretary to Government (Labour) that the said Award shall be published in the official gazette, Puducherry.

(By order)

G. MALAR KANNAN,

Joint Secretary to Government (Labour).

BEFORE THE LABOUR COURT AT PONDICHERRY

Present : Thiru E.M.K.S. SIDDHARTHAR, M.A., B.L.,
II Additional District Judge,
Presiding Officer, Labour Court,
Pondicherry.

Thursday, the 25th day of March 2010.

I.D. No. 18/2007

V. Natarajan . . . Petitioner.

Versus

The Managing Director,
M/s. Thirupathi Microtech
Private Limited,
Pondicherry . . . Respondent.

This industrial dispute coming on this day for hearing before me the petitioner and his counsel Thiru R.S. Zivanandam, called absent, Thiru L. Satish, advocate for the respondent, upon hearing both sides, after perusing the case records, this court passed the following :

ORDER

This industrial dispute has been referred to this court by the Government of Pondicherry, *vide* G. O. Rt. No. 59/2007/Lab./AIL/J, dated 20-3-2007 of the Labour Department, Pondicherry to resolve the following disputes:

(a) Whether the dispute raised by Thiru V. Natarajan over non-employment by the management of M/s. Tirupathi Microtech Private Limited, Puducherry is justified or not?

(b) To what relief, he is entitled to?

(c) To compute the relief, if, any awarded in terms of money, if it can be so computed?

2. The industrial dispute was taken on file on 22-3-2007. Form -F for the respondent was filed on 23-8-2007 and the case was posted to 18-10-2007 for filing Form-F and claim statement. Form-F for the petitioner was failed on 29-11-2007 and the case was posted to 15-2-2008 for claim statement. Thereafter the case was adjourned for about 25 (twenty-five) hearing on the following dates: 10-4-2008, 26-6-2008, 18-8-2008, 24-10-2008, 22-12-2008, 12-2-2009, 19-3-2009, 30-4-2009, 16-7-2009, 23-7-2009, 6-8-2009, 10-9-2009, 22-10-2009, 5-11-2009, 12-11-2009, 10-12-2009 for filing claim statement and on 17-12-2009, 7-1-2010, 21-1-2010, 4-2-2010, 11-2-2010, 25-2-2010 for filing claim statement or for dismissal. On 4-3-2010 and again on 11-3-2010 petition praying for extension of time was filed and allowed and case posted to 18-3-2010. The industrial dispute is pending for 3 years (three years) from 22-3-2007 to 25-3-2010. Unfortunately the petitioner is a labour, who claims to have been victimised by the respondent company, but the petitioner himself is not ready to file claim statement and proceed with the case. On the other hand he has exceeded the time limit stipulated under the Industrial Disputes Act. Despite sufficient opportunities given, the petitioner did not choose to file the claim statement. This shows that the petitioner would have got employment in some other company and hence has lost interest in the matter. Further, the Industrial Disputes Act, requires that a dispute should be resolved within 6 months (six months). Hence this court finds that there is no point in having the case pending on the file and the industrial dispute is liable to be dismissed.

3. In the result, the industrial dispute is dismissed.

Typed to my dictation, corrected and pronounced by me in the open court, on this the 25th day of March 2010.

E.M.K.S. SIDDHARTHAR,
II Additional District Judge,
Presiding Officer,
Labour Court, Pondicherry.